

IN THE COURT OF THE MUNSIFF-MAGISTRATE, SULTHANBATHERY

Present: Smt.Noorunnisa P., Munsiff-Magistrate

Monday the 8th day of January, 2024

18th day of Pousha- 1945

ORIGINAL SUIT No.157/2018

K.P Chakrapani, Aged 60 years,
S/o.Raman Nair, President,
Kerala State Housing Board Allottees Association,
Meenangadi, Wayanad District,
Register No:154/08, Purakkadi amsom and desom,
Meenangadi Post, Wayanad District -613591.

Plaintiff

V/s

1. Benny, S/o.Paulose, Aged 53 years,
12/502, Meenangadi Post,
Purakkadi amsom and Desom,
Sulthanbathery Taluk, Wayanad District,
Pin:613591.
2. Salu C.P., S/o.Paulose, Aged 44 years,
13/625 A, Meenangadi Post,
Purakkadi amsom and Desom,
Sulthanbathery Taluk, Wayanad District,
Pin:613591.
3. Raju V.V. @ Rajachan George,
S/o.Varkey, Aged 52 years, D-12/16,
K.S.H.B Colony, Meenangadi Post,
Purakkadi amsom and Desom,
Sulthanbathery Taluk,Wayanad District,
Pin:613591.

Defendants

Counter Claim

1. Benny, S/o.Paulose, Aged 53 years,
12/502, Meenangadi Post,
Purakkadi amsom and Desom,
Sulthanbathery Taluk, Wayanad District,
Pin:613591.

Petitioners/Counter
Claimants

2. Salu C.P., S/o.Paulose, Aged 44 years,
13/625 A, Meenangadi Post,
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K.P Chakrapani, Aged 60 years,
S/o.Raman Nair, President,
Kerala State Housing Board Allottees Association,
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Register No:154/08, Purakkadi amsom and desom,
Meenangadi Post, Wayanad District -613591.

Respondent/Plaintiff

This original suit is coming on 3rd day of January, 2024 for final hearing before me in the presence of Sri.Bijesh.K and Sri.Sundar Ram, Advocates for plaintiffs in original suit and respondents in counter claim and defendants and counter claimants in counter claim set exparte and having stood over for consideration to this day court delivered the following:-

JUDGMENT

Suit is one for realisation of money.

2. Plaint averments in brief is as follows:- The plaintiff is the Kerala State Housing Board Allottees Association (Registration No.154/2008) registered under Society Registration Act and Kerala State Housing Board (Formation of Allottees Association) Regulations, 2000, engaged in managing the affairs of residents in Kerala state Housing Board colony, Meenangadi, Wayanad. Plaintiff being its

president is representing the association. Plaintiff schedule property was purchased by the board in the year 1994 for the construction and sale of dwelling houses. The houses shall be allotted to the plaintiff society, the dwelling houses have certain common facilities like garden, parking areas, internal road, water lines, sewage pipelines, open well, water tank, play ground, motors, pump-sets, Electrical supply lines, pump house, agricultural produces etc. To which, every member of the society shall be liable to pay maintenance charges, initially it was ₹150/-. It was subsequently, hiked as per the resolution passed by the general body of the plaintiff's society due to the increase in expenses to maintain the common amenities and for the development of common areas. In the year 2014 onwards, the amount fixed as ₹500/- and the defendant and other occupants were paying the amount regularly without fail. However, after the general body meeting held on 29.3.2016, the monthly maintenance charges were hiked to ₹1000/-. Accordingly, the plaintiff society started to levy monthly maintenance charges at the rate of ₹1000/- per month from March 2016 onwards. The defendant herein was occupying F- 22/1 house and being a member of the plaintiff society from the date of purchase and continued using the common facilities of the board without fail. However, the defendants had made default in payment of maintenance charges from September, 2016. Thereafter, till the date, the defendant had not paid any amount towards the maintenance charge. As per the resolution passed on 25.9.2016, every member who makes default in paying the monthly subscription is also liable to pay fine of ₹100/- per month in addition to the monthly maintenance charges. As on 29.6.2018, the defendants are liable to pay ₹21,250/- towards the overdue of monthly subscription and ₹2200/- towards the fine and mandatory membership transfer fee of ₹2500/- altogether an amount of ₹25,950/- is due from the defendants to the plaintiff society. Even after the repeated requests, the defendants failed to make payment and continue to use the common areas and facilities. Consequently, the plaintiff's society had issued a notice on 20.4.2018, calling for the entire due amount as on the date and directed the defendants to clear the entire

dues within 15 days of the receipt of the notice. Though the defendants received notice on 21.4.2018, but neither replied nor paid any amount till date. Further case of the plaintiff is that the defendants are also liable to pay the charges of notice which amount to ₹1000/-. Hence the total amount payable by the defendant as on the date of the suit is ₹26,950/-. Later, the defendant and his henchmen came to the plaint schedule property, they were informed by the president of the plaintiff society that the society is going to terminate all the common facilities enjoyed by the defendants. The defendants threatened the plaintiff that he will implicate them in false criminal case by alleging the commission of non bailable offences etc. The act of the defendants are highly arbitrary and illegal. The defendants have no right to violate the rules and regulation of the plaintiff's society. Hence the suit is for return of money of ₹26,950/-and for permanent prohibitory injunction.

3 When the summons served, the defendants filed a written statement with following contentions:- The defendants denied all the allegations in the plaint and according to the defendants, this is a fictitious suit. According to the defendants, they are not an allottee , but a purchaser of the property. Therefore, they need not be a member of the Kerala State Housing Board Allottee Association. Therefore, the defendants are not bound to obey the demands of the society. The plaintiff and his men insisted the defendants and certain other residents of the housing colony to give more money towards the electricity bill which a complaint has made before the Meenangadi Police. On vengeance of which this, frivolous suit has been instituted against this defendants along with six other residents of the colony. Further, the defendants have every authority to dig private bore well in his own property and the plaintiff has no question the digging. However, the plaintiff had filed a complaint before ground Water Department and digging of bore well is now suspended. The plaintiff is not entitled to any of the relief as prayed for and the defendants sought a counter claim claiming compensatory costs and to pass a decree of mandatory injunction directing the plaintiff's society to take steps to

vacate the prohibitory order issued by the District Officer, Ground Water Department .

4. The plaintiff filed replication to the counter claim with the contentions as follows:- According to the plaintiff, counter claim by the defendants is not filed in the format prescribed by law and it is liable to be dismissed in limine which does not disclose in the cause of action and with the ulterior intention to drag the proceedings to an uncertain extent of time and denied all the claims raised by the defendants and prayed for dismissing the counter claim with compensatory costs of the plaintiff.

5. Based on the above contentions, following issues were framed for trial:-

1. Whether the plaintiff entitled to get decree of money as sought for?
2. Whether the plaintiff entitled to get decree of permanent prohibitory injunction as sought for?
3. Whether the defendant entitled to get decree of mandatory injunction as sought for?
4. Reliefs and costs?

6. When the suit was listed for trial, defendants' counsel reported no instruction. Hence defendants set ex parte in the suit and counter claim dismissed for default. The President of the plaintiff's society entered into the box and examined as PW1. Exts. A1 to A10 were marked on the side of the plaintiff.

7. Issue Nos.1 to 3:- For the sake of convenience issue Nos.1 to 3 are considered together. The plaintiff himself entered into the box and examined as PW1 and filed a proof affidavit in tune with the plaint. Exts.A1 to A10 were marked. Ext.A1 is the true copy certificate of registration Memorandum of

association and Bye-law of the Plaintiff's society. Ext.A2 is the true copy of certificate of recognition of the plaintiff's society by the Kerala state Housing Board. Ext.A3 is the true copy of the assignment deed No. 860/15 executed by Dr. Hareendranath. Ext.A4 to A6 are the true copies of the extract of minutes of General body meeting conducted by the plaintiff. Ext.A7 is the true copy of the relevant pages of the register showing payment default of the defendant. Ext.A8 is the copy of the letter issued by the plaintiff to the defendants demanding to clear the dues. Ext.A9 is the acknowledgment card (2 in numbers). Ext.A10 series are the attested copy of the minutes of general body meeting of plaintiffs' society.

8. As the plaintiff was constrained to file the suit on the basis of the acts committed by the defendants, the plaintiff is entitled to realise the costs of the proceedings from the defendants. There is no contrary evidence to disbelieve the evidence of PW1. The claim of the plaintiff is established through unchallenged testimony of oral and documentary evidence. Since the defendants failed to adduce evidence to establish the case in the counter claim, counter claim is dismissed for default. After considering the material facts, this court is of the view that plaintiff is entitled to get decree for permanent prohibitory injunction against the defendants. So issue Nos.1 to 3 are found in favour of the plaintiff in the suit.

9. Issue No. 4 : As the plaintiff was constrained to file the suit on the basis of the acts committed by the defendants, the plaintiff is entitled to realise the costs of the proceedings from the defendants. There is no contrary evidence to disbelieve the evidence of PW1. Hence, suit decreed as follows:-

- (1) Defendants are directed to pay a sum of ₹26,950/- (Rupees twenty six thousand nine hundred and fifty only) with future monthly subscription, and fine at the rate of ₹100/- per month from the date of suit till the

date of realization, to the plaintiff.

2. The defendants are also restrained from using the common amenities without paying the monthly subscription/maintenance charges to the plaintiff.

3. Counter claim raised by the defendants dismissed, no costs.

4 Defendants are also directed to pay costs of the proceedings.

(Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open court this the 8th day of January, 2024)

Sd/-
MUNSIFF-MAGISTRATE

Appendix:-

Plaintiff's Witness:

PW1 - 03.01.2024 - K.P Chakrapani.

Plaintiff's Exhibits:

A1 - 14.08.2008 - Certificate of Registration, Memorandum of Association and bye law(True Copy)

A2 - 13.10.2017 - Certificate of recognition of the Plaintiff's Society by the Kerala State Housing Board (True Copy).

A3 - 16.04.2015 - Assignment deed No:860/2015.

A4 - 29.03.2016 - Extract of the minutes.

A5 - 25.09.2016 - Extract of the minutes.

A6 - 29.06.2018 - Extract of the minutes.

A7 - 29.06.2018 - The relevant page of the register.

A8	-	20.04.2018	-	Letter.
A9	-	21.04.2018	-	Acknowledgment Card.
A9(a)	-	21.04.2018	-	Acknowledgment Card.
A10	-	31.01.2018	-	Attested Copy of Minutes.

Defendants' Witness and Exhibits : Nil.

MUNSIFF-MAGISTRATE

Typed by : Sajeer E.
Compared by : Geetha V.